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IN THE

Supreme Court of the United States

March Term, 1960

No. 792

RONALD MOLITOR, a Minor, by PETER MOLITOR,
his father and next friend,
Petitioner,

v.

RANELAND COMMUNITY UNIT DISTRICT NO. 302, et al.,
Defendants.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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Ronald Molitor, a minor, by Peter Molitor, his father and next friend, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above entitled case on January 19, 1960, and the judgment in the companion case entered in the above entitled case on December 16, 1959.

Opinion Below

The opinion of the Supreme Court of Illinois is reported at 18 Ill. 2d 11, 163 N.E. 2d 89.

Jurisdiction

The judgment of the Supreme Court of Illinois as to this petitioner is dated and was entered on January 19, 1960 (Appendix B). The judgment in the companion case deter-

mining petitioner's rights in the premises was entered on December 16, 1959 (Appendix A).

The jurisdiction of this Court is invoked under 28 U.S.C.A. Sec. 1257 (3).

Questions Presented for Review

Whether, when eighteen children are injured in a bus accident, the Supreme Court of Illinois may constitutionally apply one rule of law to one injured child and deny the application of the same rule of law to the remaining seventeen children. The Supreme Court of Illinois abolished school district immunity from suit in tort as to one bus occupant and preserved immunity as to another bus occupant, this petitioner, a brother of the successful appellant. Both children were injured simultaneously in the same bus under identical circumstances.

Constitutional Provisions Involved

Amendment XIV to the Constitution of the United States, Sec. 1:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Statement of the Case

On March 10, 1958, petitioner, Ronald Molitor, and his brother, Thomas Molitor, grade school students of Kaneland Community Unit District No. 302, a quasi-municipal corporation operating schools in Kane County, Illinois, together with sixteen other children, were severely injured when a school bus driven by an agent of Kaneland negli-

gently hit a culvert and exploded. Petitioner, Ronald Molitor, Thomas Molitor, and two of their sisters who were also on the bus filed a Complaint in the Circuit Court of Kane County, Illinois, alleging negligence on the part of the school district.

The trial judge dismissed the Complaint of Thomas Molitor and that of his brother, Ronald, and two sisters on the ground that under Illinois decisional law a school district was immune from suit for tort.

Thomas Molitor elected to stand on his Complaint and appealed to the Supreme Court of the State of Illinois. The appeal was transferred from the Supreme Court of Illinois to the Appellate Court of the Second District of Illinois. The Appellate Court of the Second District of Illinois affirmed the dismissal of the suit, 20 Ill. App. 2d 555, 155 N.E. 2d 841 (Record 2-9) but granted a certificate of importance (Record 8) to the Supreme Court of the State of Illinois.

On May 22, 1959, the Supreme Court of Illinois reversed the decision of the Appellate Court and of the trial court and abolished school district immunity in Illinois (Record 14-35).

Thereafter, petitions for leave to intervene as *amici curiae* were allowed and briefs in support of a Petition for Rehearing were filed by the Forest Preserve District of Cook County, Illinois, the Board of Education of the City of Chicago, Illinois, the Chicago Park District and the Illinois Association of School Boards.

The Supreme Court of Illinois granted the Petitions for Rehearing (Record 36), and on December 16, 1959, published its opinion on rehearing (Record 32-62).

The opinion of the Court on rehearing restricted the abolition of school district immunity to a prospective applica-

tion only with the exception that the petitioner's brother's Complaint was held to state a cause of action.

The opinion on rehearing held (Record 49-51), and Mr. Justice Davis' dissenting opinion pointed out (Record 60-61) that the effect of the decision was that one child on the school bus could recover against the school district but that the remaining identically situated children could not recover. Mr. Justice Bristow's specially concurring opinion dissented from the majority opinion to the extent it allowed recovery to one child on the bus and denied it to the rest of the children.

In the majority opinion (Record 50) the Supreme Court expressed a desire to reward Thomas Molitor for bringing the appeal and affording the Court the opportunity to change the law of governmental tort immunity in Illinois.

The appeal in accordance with Illinois decisional law was not brought by the minor, Thomas Molitor, but by Peter Molitor as father and next friend of Thomas Molitor. Peter Molitor is father and next friend of petitioner Ronald Molitor, also.

Actually, it was Peter Molitor as father and next friend of all of the injured brothers and sisters who bore the expenses of the appeal.

The result finally reached by the Supreme Court of Illinois had never been mentioned in any of the briefs of the parties on rehearing or otherwise.

Startled by the Court's decision terminating his rights when he had not even been before it, and upon a wholly unprecedented, surprising and unexpected theory, petitioner Ronald Molitor, whose Complaint had been held in abeyance in the Circuit Court of Kane County awaiting disposition of Thomas Molitor's test case by the Supreme Court of Illinois, immediately (with others of the injured children) filed a Petition for Leave to Intervene and a Petition for Clarifi-

cation of Opinion and Suggestions in Support thereof, with the Supreme Court of Illinois.

Ronald Molitor distinctly and directly raised the constitutional questions at the first opportunity (Petition for Leave to Intervene of Ronald Molitor, Record 72).

On page 4 of Petition for Leave to Intervene, it is stated as follows:

> "(b) That the denial of these petitioners of rights afforded Thomas Molitor by this decision deprives each and all of them of their constitutional guarantees under the Constitution of the State of Illinois and under the Fourteenth Amendment of the Constitution of the United States of America of due process of law and equal protection of the laws. Accordingly, the petitioners are of the opinion that such a violation of their constitutional rights must be raised at the earliest opportunity after such deprivation has resulted."

The Suggestions in Support of the above statement are fully detailed on pages 3 through 16 of the Petition for Leave to Intervene of Ronald Molitor.

On January 6, 1960, the Supreme Court of Illinois denied petitioner Ronald Molitor's Petition (Record 77). This Petition ensued.

Reasons for Granting the Writ

By its decision in the opinion of December 16, 1959, discriminating between the identically situated brothers, Thomas and Ronald, who were injured in the same school bus collision, which discrimination was confirmed by the Supreme Court of Illinois' denial of Ronald Molitor's Petition for Leave to Intervene and to Clarify the Opinion, the Supreme Court of Illinois decided a Federal question not theretofore determined by the Supreme Court of Illinois.

It decided that Federal question, furthermore, certainly